IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 527 of 2000.

Judgement reserved on: 11.9.2007.

Date of decision: 2.11.2007.

State of H.P. ….. **Appellant.**

Vs.

Kuldip Singh …. **Respondent.**

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. M.L.Chauhan, Addl. Advocate General.**

For the Respondent : **Mr. Adarsh Sharma, Advocate vice Mr. Suresh Bhardwaj, Advocate.**

Kuldip Singh, Judge.

The State has filed this appeal against the judgement dated 26.5.2000 recorded by the learned Additional Chief Judicial Magistrate, Ghumarwin, in case No. 409/1 of 1996, acquitting the respondent, under Sections 323, 379, 506 IPC.

2. The prosecution case in brief is that respondent on 3.7.1996 at about 7.45 p.m. at village Hatwar voluntarily caused simple hurt to complainant Sohan Lal the conductor of bus No. HP-24-4512. It is also alleged that respondent took away cash bag of the complainant containing currency notes and also threatened him so as to cause him alarm. The matter was reported to the police, vide

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Whether the reporters of the local papers may be allowed to see the Judgment?

statement Ex. PW 1/A of the complainant and on that basis an FIR Ex. PW 6/A was registered against the respondent at Police Station, Bharari. The case was investigated, Sohan Lal complainant was medically examined vide MLC Ex. PW 9/A, PW 3 Ramesh Kumar was also examined, vide MLC Ex. PW 9/B. After completion of the investigation, challan was put up in the court and respondent was charged, under Sections 323, 379, 506 IPC, to which he pleaded not guilty and claimed trial. The prosecution examined nine witnesses. The statement of the respondent was recorded, under Section 313 Cr.P.C., he pleaded his innocence, but did not lead any evidence in defence. The learned Additional Chief Judicial Magistrate acquitted the respondent on 26.5.2000, hence, State is in appeal.

3. I have heard the learned counsel for the parties and gone through the record. The learned Additional Advocate General has submitted that prosecution has proved the case beyond reasonable doubt against the respondent, the learned Additional Chief Judicial Magistrate has erred in acquitting the respondent. On the contrary Mr. Adarsh Sharma, Advocate, appearing vice counsel for the respondent has supported the impugned judgement.

4. PW 1 Sohan Lal has stated that on 3.7.1996, he was conductor on bus No. HP-24-4512 and Ramesh was driver. At about 6.15 p.m. they were sitting at Munshi Ram's tea stall for taking tea. Surinder was also there. In the meantime, the respondent came there under the influence of liquor and stated that they were thieves. He pulled his shirt and slapped him. He telephoned to police and when he was approaching his bus, the respondent again came there

and started quarreling. The respondent took his cash bag, Kalu Ram and Ramesh Kumar driver came there and they rescued him. The cash bag was handed over to him by respondent after tearing. Thereafter respondent ran away from that place. The bus was taken to Police Station. There was shortage of Rs. 1900/- in his cash, which respondent took away. He reported the matter to the police vide Ex. PW 1/A. He handed over his watch and torn vest to police vide memo Ex. PW 1/B. The police took into possession, tickets, punch and cash vide memo Ex. PW 1/C. There were Rs. 1279.15 in the bag. He was medically examined. In cross-examination he has stated that quarrel took place at two places, firstly in the tea stall, secondly where the bus was parked. No person came to the spot where the quarrel took place. Later on Kalu Ram and driver of the bus came, Surinder came with driver. Some cash fell at the place where the quarrel took place, but nobody picked up that cash. He told the police about the shortage of the cash at about 9 p.m.

5. PW 2 Munshi Ram has stated that about two years ago at about 5.30 p.m. Sohan Lal and bus driver were sitting with him for taking tea, the conductor and respondent had some quarrel and they went out. He did not see any quarrel, which took place on the road. In his shop, respondent did not slap the conductor. This witness was declared hostile and was cross examined by the prosecution. He denied that respondent slapped Sohan Lal and tore his shirt and vest. He denied that the respondent took away the bag of the conductor and after removing the money, tore the bag.

6. PW 3 Ramesh Kumar driver of bus HP-24-4512 has stated that on 3.7.1996, at 7.00 p.m. they stopped to have their food at Munshi Ram hotel. The respondent came there under the influence of liquor. The respondent assaulted the conductor Sohan Lal. He tried to save him, but he was also beaten up. The cash bag of conductor was snatched and his clothes were torn. He was rescued by Munshi Ram, Dinesh and Kalu Ram. The conductor told that there was a shortfall of Rs. 1900/-. In cross-examination, he has stated that they were taking meals, a Clerk of the Advocate was also sitting. No open injury was sustained.

7. PW 4 Dinesh Kumar has stated that he was working as sales-man in a liquor vend. In his cross-examination, he has stated that he is not aware of the incident. Therefore, his statement is not relevant. PW 5 Bimla Devi is also not an eye witness to the incident. PW 6 HC Nain Singh has recorded statement Ex. PW 1/A of Sohan Lal and FIR Ex. PW 6/A. PW 7 Sita Ram is the Investigating Officer. PW 8 Surinder Singh has stated that on 3.7.1996 when bus was stopped at Hatwar at about 7.30 p.m., he also came out from the bus for taking tea. The respondent came there under the influence of liquor and started abusing the driver and the conductor and gave beatings with kicks and fist blows. The shirt of the conductor was torn, 2-3 slaps were given to Ramesh. The respondent took away the bag of the conductor.

8. PW 9 Dr. T.S.Chandel has conducted the medical examination of the injured and issued MLC Ex. PW 9/A of Sohan Lal

as well as MLC of Ramesh Kumar Ex. PW 9/B. In cross examination, he has stated that injuries referred in MLCs can be caused by fall.

9. There are material contradictions in the prosecution story. PW 1 Sohan Lal has stated that occurrence took place at 6.15 p.m., PW 2 Munshi Ram has given the time 5.30 p.m., PW 3 Ramesh Kumar and PW 4 Dinesh Kumar have given the time as 7.00 p.m. and 7.30 p.m. respectively. PW 1 has stated that occurrence took place in two parts, once in Munshi Ram's tea stall and second time when he was approaching the bus. PW 2 Munshi Ram and PW 3 Ramesh Kumar the other alleged eye witnesses have not stated so. PW 1 has stated that he and Ramesh Kumar stopped for taking tea in Munshi Ram's tea stall, Surinder was also there, respondent came there and pulled his shirt and slapped him. PW 2 Munshi Ram has stated that PW 1 Sohan Lal and driver of the bus were sitting with him for taking tea, the conductor and respondent had some quarrel and they went out. He has not stated that respondent pulled shirt of PW 1 Sohan Lal and slapped him. He has also not stated that Surinder was there at that time.

10. PW 3 Ramesh Kumar has stated that they stopped at Munshi Ram's hotel for taking meals, respondent assaulted Sohan Lal and when he tried to save him, he was beaten up. This was not stated by PW 1 that Ramesh Kumar was beaten up in the shop of Munshi Ram. PW 3 has stated that Munshi Ram, Dinesh Kumar and Kalu Ram were also there and conductor told that there was a shortfall of Rs. 1900/-. He has also stated that a Clerk of an Advocate was also sitting there. Pw 3 Ramesh Kumar nowhere

stated that occurrence took place in two parts. Whereas, PW 1 has stated that when he was approaching the bus, respondent again came there and started quarreling with him and took away his cash bag and there was shortage of cash amounting to Rs. 1900/-.

11. PW 1 has stated that respondent handed over the cash bag back to him after tearing it, but it was not stated by PW 3. PW 8 Surinder Singh has stated that respondent took the cash bag with him. PW 4 has stated that he is not aware of the incident. PW 5 Bimla Devi is not an eye witness. PW 9 Dr. T.S.Chandel has stated that injuries referred by him in the MLCs Exs. PW 9/A and PW 9/B can be caused by fall. The prosecution case is that the respondent was under the influence of liquor when he gave beatings to PW 1 Sohan Lal and PW 3 Ramesh Kumar. There is nothing on record regarding the medical examination of the respondent to show that he was under the influence of liquor at the relevant time. The prosecution has failed to prove the case against the respondent beyond reasonable doubt. It is the case of the prosecution that the shirt of the complainant Sohan Lal was torn, but no such shirt was produced during trial. The learned Additional Chief Judicial Magistrate has noticed material contradictions in the prosecution story. He has taken a possible view from the material on record. No case has been made out for interference. Hence, the appeal is accordingly dismissed.

November 2, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**